

No. 12,680

IN THE

**United States Court of Appeals
For the Ninth Circuit**

UNITED STATES OF AMERICA,

Appellant,

vs.

A. LESTER MARKS, ELIZABETH LOY
MARKS and HERBERT M. RICHARDS,
Trustees of the Estate of L. L. Mc-
Candless, Deceased,

Appellees.

Upon Appeal from the United States District Court
for the Territory of Hawaii.

**BRIEF ON BEHALF OF TRUSTEES
ESTATE OF L. L. McCANDLESS, APPELLEES.**

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JURISDICTION.

The jurisdiction of the District Court was based on Private Law 433, 80th Congress, 2d Session, approved June 29, 1948.¹ Final judgment was entered April 25, 1950 (R. 19-20) and notice of appeal was filed on June 16, 1950 (R. 20). Jurisdiction of this Court rests on 28 U.S.C. 1291.

¹Record pp. 4, 5 and Appendix.

QUESTIONS PRESENTED.

- (1) Did the District Court err in finding that the damage to appellees' personal property did not arise out of "combat activities of the military personnel of the United States"?
- (2) Did the District Court err in ruling that the lands leased to appellees by the Territory could not be withdrawn under the terms of the lease for purposes of the United States?
- (3) Did the District Court err in finding that appellant failed to establish its counterclaim by a preponderance of the evidence?

STATEMENT.

Prior to December 7, 1949, appellees operated a cattle ranch in the District of Waianae, Island of Oahu, Territory of Hawaii, consisting of certain fee lands and of General Leases No. 1740 and No. 1741 (R. 41-44). On December 9, 1941, the Army began moving into the ranch (R. 127) and ten days later when appellee Marks made his first visit to the ranch after the Pearl Harbor attack, the Army had torn down the fences, cut the pipe lines and overturned or destroyed the water troughs (R. 47-48). The result was that the cattle, unable to get water, dispersed into the forest reserve and many were lost. Some of the dispersed cattle were recovered, however, at a cost estimated at \$4,115.00 (R. 77). Also dispersed or destroyed were some 200 pigs (R. 53). Two

horses, valued at \$125 apiece (R. 52) got out through an open gate onto the railroad and were killed by a train (R. 128).

On December 29, 1941, appellee Marks wrote the "Military Governor" pointing to the fence cutting and stating that the result was a dispersal of the cattle (R. 56). The military authorities replied and issued an order that where fences were cut temporary barriers be erected (R. 57, 58). The soldiers also used 200 redwood fence posts as firewood and took 400 bags of algaroba beans and 500 empty jute bags (R. 78-79). There was testimony as to the number of cattle and pigs lost, their marketability and their value. However, appellant does not challenge the court's findings on damages.

General Leases No. 1740 and No. 1741, each contained the following provisions:

IT IS MUTUALLY AGREED, That at any time or times during the term of this lease, the land demised, or any part or parts thereof, may at the option of the Lessor, on behalf of the Territory of Hawaii, or any person or persons, corporation or corporations, be withdrawn from the operation of this lease for homestead or settlement purposes, or for storing, conserving, transporting and conveying water for any purpose, or for reclamation purposes, or for forestry purposes, or for telephone, telegraph, electric power, railway or roadway purposes, or for any public purpose, or for sale for any purpose for which lands may be sold under the provisions of Section 73 of the Hawaiian Organic Act as now or hereafter amended, and possession resumed by the Lessor,

in which event the land so withdrawn shall cease to be subject to the terms, covenants and conditions of this lease, and the rent hereinabove reserved shall be reduced in proportion to the value of the part so withdrawn. (R. 35, 36.)

On July 2, 1942, the then Commissioner of Public Lands wrote appellees that Lt. General Emmons had requested that all government land of Kahanahaiki and Makua "be made immediately available to the Army for war purposes" and that therefore General Lease No. 1740 was cancelled, effective June 29, 1942 (Joint Ex. B-2; R. 34, 36).

On July 27, 1942, a similar letter respecting Lease No. 1741 was sent, cancelling it, effective December 29, 1942 (Joint Ex. C-3; R. 37, 38).

Between the time of the attack and the date they were ordered out by the Army, appellees were in joint occupation with the Army, trying to run the ranch the best they could (R. 63-65). The appellees were ordered out on June 20, 1942, but actually got out a little later (R. 65, 66). The findings of the District Court on the value of the leaseholds is not questioned here.

The counterclaim.

At appellees' request certain improvements on their fee simple land at Makua, which was occupied by the Army, were replaced on their fee simple land at Ohikilolo at the time that appellees, obeying the Army's orders, moved out of the ranch (R. 107, 322).

They consisted of some new structures and others moved from the other property (R. 102, 182, 184). Subsequently in 1943 the Makua lands were condemned by appellant in a separate proceeding (Civil No. 485; R. 112-3) and a compromise settlement was reached by the stipulation filed July 1, 1949 (R. 25-27). In compiling their figures and in arriving at the compromise appellees took into consideration these improvements (R. 107, 109, 322, 323). There was no substantial evidence to establish the counterclaim, which evidently was an afterthought of counsel, mentioned for the first time in the amended answer filed January 13, 1950 (R. 8-10). The District Court found that appellant failed to establish the counterclaim by a preponderance of the evidence (R. 16).

ARGUMENT.

I.

NO COMBAT ACTIVITIES ARE INVOLVED IN THIS CASE.

The act² under which this suit was brought contains a proviso which states:

PROVIDED, That judgment shall not be rendered against the United States with respect to any part of the alleged damages for the loss of personal property, including livestock, which arose out of the combat activities of military personnel of the United States.

²Private Law 433, 80th Cong., 2d Sess., is set forth in the Appendix.

We think any question as to whether the damages as proved in this case arose from "combat activities" is set at rest by the report³ of the Committee on the Judiciary to which the bill was referred. The Committee said:

In this connection, it should be pointed out that the Department of the Army have included in section 1 of the bill a proviso clause which would preclude judgment being rendered against the United States for the loss of personal property, including livestock, which arose out of the 'combat activities' of United States military personnel. This proviso seems unnecessary as no evidence was presented to your committee of any combat activities, as the term is generally understood, of military personnel in the areas in question. However, as stated earlier, the United States Army did engage in defensive operations, moving in artillery and military personnel, setting up camps, roads, etc., and these are the activities complained of which the estate contends resulted in the loss of its property. Your committee by adopting the bill in its entirety, including the proviso, does not intend to relieve the United States of any liability for the claimant's loss of personal property, including livestock, due to the activity of the United States forces, and if such losses are established by competent evidence to be the result of such activities the court is instructed to render judgment therefor. (H.R. Rep. No. 2063, p. 4.)

Appellant culls from the report the clause about the proviso being unnecessary, and then asserts that

³H.R. Rep. No. 2063, 80th Cong., 2d Sess. (1948).

the Committee, in saying no combat activities were involved, was inaccurately informed.

The report, based upon testimony taken in a 1945 hearing by a Subcommittee of the House of Representatives in Honolulu, at which the Army failed to present witnesses or to appear despite invitation (H.R. Rep. No. 2063, p. 3) states:

The claims of the estate of L. L. McCandless, deceased, against the United States arise out of the military operations of the United States' forces in the districts of Waianae and Waiaua, island of Oahu, in the Territory of Hawaii, on and after December 7, 1941. On that date, following the bombing of Pearl Harbor, and in defensive operations against possible Japanese invasion, United States Army contingents, including artillery, swarmed over the lands owned in fee simple or under lease by the said McCandless estate. The Army forces knocked down fences, which resulted in the loss of many cattle that were frightened out of the area, some into the forest reserve and not recoverable, and others were killed. The Army's occupation not only impeded but practically destroyed further ranch operations by the estate, and the Army's remaining in possession not only caused the loss or destruction of cattle and other personal property but also effectively deprived the estate of the land itself. No claim was here made for damages with respect to the land owned outright by the claimant, but only with respect to the lands held under lease (H.R. Report No. 2063, p. 2).

At the trial the District Court, after hearing the evidence, found:

That on December 7, 1941, military personnel of the defendant entered into possession of plaintiffs' ranch and thereafter occupied the entire premises, disrupting plaintiffs' ranching operations; that upon the initial entry only a small number of troops occupied portions of the ranch premises along the coastline, but subsequently in the year 1942, a substantial number of military personnel was deployed throughout the premises together with their equipment; that the military personnel so entering upon the plaintiffs' premises were not engaged in combat activities.

It thus appears that the Committee had in mind the very activities proved at the trial below (R. 127, 47-48, 52, 53, 78-79, 128) when it stated that combat activities were not involved in the claim and that if the acts and damages complained of were shown, the estate should have judgment.

A similar phrase using the words "combatant activities" appears in the Federal Tort Claims Act, at what is now 28 U.S.C. 2680(j), and has been dealt with in three decisions⁴ and treated by Judge Yankwich in his article, *Problems Under the Federal Tort Claims Act*.⁵ Appellant places heavy reliance on *Johnson v. United States*, decided by this Court and regarded as the leading case on the subject. We think this reliance misplaced, even if the special legislative history of Private Law 433 be disregarded. As this Court said in the *Johnson* case:

⁴*Johnson v. United States*, 170 F. 2d 767, 770 (CA 9, 1948); *Skeels v. United States*, 72 F. Supp. 372, 374 (1947); *Jefferson v. United States*, 74 F. Supp. 209 (1947).

⁵9 F.R.D. 143, 159-161.

The rational test would seem to lie in the degree of connectivity (170 F. 2d 770).

In considering this problem, a variety of hypothetical situations spring to mind, each differing somewhat in degree of connectivity. The most certain thing that can be said is whether the damages here arose out of "combat activities" is a mixed question of law and fact decided against the appellant below. Nothing in the *Johnson* case supports appellant's contention that all activities in preparation for a possible invasion which never would be a "combatant activity" under the Tort Claims Act in all cases and under all circumstances as a matter of law. Furthermore, whether the activities resulting in the damages here were entirely occasioned by preparation for the anticipated invasion which never came, is not clear. How cutting pipes, overturning and destroying water troughs (R. 47, 48) and burning redwood posts for firewood (R. 78) formed a part of that preparation is not established by the record.

It is to be noted that the phrase "combatant activities" was construed by this Court to be broader than the word "combat" in the *Johnson* case, *supra*. The phrase here is "combat activities." Appellant says that "combat" and "combatant" when used as adjectives are synonymous, citing Webster's New International Dictionary (2d Ed.). That they can be so is obvious. It is also obvious that a rational distinction can be drawn between them, and "combat activities" can be construed as meaning actual actions in combat. Be that as it may, the House Report as quoted

dispenses with the need for construction or speculation. No "combat activities" within the meaning of the phrase as used in this act are involved in this suit.

II.

THE LEASES COULD NOT BE WITHDRAWN FOR THE PURPOSES OF THE UNITED STATES.

Appellant's argument on this issue is based on Section 91 of the Hawaiian Organic Act⁶ which provides:

Sec. 91. That, except as otherwise provided, the public property ceded and transferred to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July seventh, eighteen hundred and ninety-eight, shall be and remain in the possession, use, and control of the government of the Territory of Hawaii, and shall be maintained, managed, and cared for by it, at its own expense, until otherwise provided for by Congress, or taken for the uses and purposes of the United States by direction of the President or of the Governor of Hawaii. And any such public property so taken for the uses and purposes of the United States may be restored to its previous status by direction of the President; and the title to any such public property in the possession and use of the Territory for the purposes of water, sewer, electric, and other public works, penal, sewer, electric, and

⁶For a convenient reference to the Hawaiian Organic Act in its entirety before and after the amendments of 1941, see Revised Laws of Hawaii 1935, pp. 35-67 and Revised Laws of Hawaii 1945, pp. 21-57.

other public works, penal, charitable, scientific, and educational institutions, cemeteries, hospitals, parks, highways, wharves, landings, harbor improvements, public buildings, or other public purposes, or required for any such purposes, may be transferred to the Territory by direction of the President, and the title to any property so transferred to the Territory may thereafter be transferred to any city, county, or other political subdivision thereof by direction of the governor when thereunto authorized by the legislature; PROVIDED, That when any such public property so taken for the uses and purposes of the United States, if instead of being used for public purpose, is thereafter by the United States leased, rented, or granted upon revocable permits to private parties, the rentals or consideration shall be covered into the treasury of the Territory of Hawaii for the use and benefit of the purposes named in this section (31 Stat. 159, 48 U.S.C. 511).

Appellant apparently construes this section as meaning that any public property, including lands sold or leased to private persons can be taken without compensation for the uses of the United States. Thus it is argued that under Section 91, the Territory held the lands "at the will of the United States" and could convey no more than it had (Appellant's Brief, p. 19). Such a patently erroneous construction ignores the plain wording of Section 91. The first sentence states "*that, except as otherwise provided*" ceded public property shall remain in the Territory's possession to be cared for at its expense until taken "for the uses

and purposes of the United States." The section is not an attempt to define when property may be taken by the United States.

The lands in question however fall within the exception being public property "otherwise provided" for by Section 73 of the Hawaiian Organic Act⁷ which provides the legislative framework for the sale, exchange, lease and administration of the public lands of Hawaii. Under this section the Commissioner of Public Lands, with the approval of two-thirds of the Land Board, had the power to make General Leases No. 1740 and No. 1741.

It is well settled that when the sovereign enters into a contract it is bound just the same as if it were a private contracting party.⁸

This applies to contracts involving lands such as grants,⁹ or leases.¹⁰

Certainly it is plain that had the lands in question been sold to appellees by the Territory in fee or leased without a withdrawal clause Section 91 would provide no basis for a seizure by the United States without just compensation. Appellees were given possession of the land under leases executed by the Commissioner of Public Lands in accordance with law. Their vested rights cannot be taken from them except by

⁷U.S.C. Title 48, Sections 661-667 inclusive.

⁸*Hall v. Wisconsin*, 103 U.S. 5, 11 (1880).

⁹*Town of Pawlet v. Clark*, 9 Cranch 292, 329 (1815);
Terret v. Taylor, 9 Cranch 43 (1815).

¹⁰*Boston Molasses Co. v. Commonwealth*, 193 Mass. 387, 79 N.E. 827 (1907).

condemnation unless the withdrawal of the lands is permitted under the terms of the leases in question.

The question whether the lands covered by these leases could be withdrawn for the purposes of the United States is governed by the terms of the leases themselves. We repeat the covenant dealing with withdrawals:

IT IS MUTUALLY AGREED, That at any time or times during the term of this lease, the land demised, or any part or parts thereof, may at the option of the Lessor, on behalf of the Territory of Hawaii, or any person or persons, corporation or corporations, be withdrawn from the operation of this lease for homestead or settlement purposes, or for storing, conserving, transporting and conveying water for any purpose, or for reclamation purposes, or for forestry purposes, or for telephone, telegraph, electric power, railway or roadway purposes, or for any public purpose, or for sale for any purpose for which land may be sold under the provisions of Section 73 of the Hawaiian Organic Act as now or hereafter amended, and possession resumed by the Lessor, in which event the land so withdrawn shall cease to be subject to the terms, covenants and conditions of this lease, and the rent hereinabove reserved shall be reduced in proportion to the value of the part so withdrawn (R. 35, 36).

This language has been dealt with by the Supreme Court of Hawaii in *Ai v. Bailey*.¹¹ The question there was whether the Territory might withdraw the lands

¹¹30 Haw. 210 (1927).

for the purpose of exchange. The court held it could not. The court construed the phrase "any public purpose" as being any purpose akin to those specifically enumerated in the clause under the doctrine of *noscitur a sociis*. The court said:

In other words, we understand the expressions used in the provision in question, describing the purposes for which lands once solemnly leased can be withdrawn at the option of the lessor alone, to have been inserted and used with a restrictive intention—that is to say, in order to name certain definite purposes for which the lands can be withdrawn while at the same time leaving the leased property immune from withdrawal for any and all other purposes. * * * Leases of public lands, like leases of private lands, are entered into by lessees because they think they see an opportunity for deriving some beneficial profit to themselves from the temporary use of the property, but ordinarily, in order to secure this end the land is desired only if it can be definitely assured to the lessee for a stated period. The right of the lessor to withdraw the whole or any part of the lands at any time purely at his or its option is not ordinarily granted and is not freely to be inferred unless the language used clearly requires it. Had it been the intention of the parties to this instrument to grant to the Territory the very large powers of withdrawal now claimed, much simpler and more direct language could have been used to express that intention and understanding (30 Haw. 212, 213).

Looking at the purposes enumerated (30 Haw. 210, 211) it is obvious that they are all purposes of the

territory. It is significant that our Supreme Court in the *Bailey* case emphasized the fact that the clause specifically allowed a withdrawal for sale for designated purposes, but omitted a withdrawal for exchange, the point being that if the Territory were to give up possession it could only do so by sale and not by exchange. The same principle applies here where it is contended that the Territory might withdraw the leases for the purpose of surrendering possession to the United States. Such a purpose is outside the scope of the covenant authorizing a withdrawal.

In harmony with this construction is the provision in the clause that possession of the lands withdrawn is to be resumed "by the Lessor." Lands withdrawn for the purposes of the United States would be in the possession of the United States, not the lessor, the Territory.

In *pari materia* with the words "public purposes," are those words as used in Section 73 of the Organic Act at the time the leases in question were made and prior to the 1941 amendment. Section 73(q) then provided:

(q) All lands in the possession, use, and control of the Territory shall hereafter be managed by the commissioner, except such as shall be set aside for public purposes as hereinafter provided; all sales and other dispositions of such land shall be made by the commissioner or under his direction, for which purpose, if necessary, the land may be transferred to his department from any other department by direction of the gover-

nor, and all patents and deeds of such land shall issue from the office of the commissioner, who shall countersign the same and keep a record thereof. Lands conveyed to the Territory in exchange for other lands that are subject to the land laws of Hawaii, as amended by this Act, shall except as otherwise provided, have the same status and be subject to such laws as if they had previously been public lands of Hawaii. All orders setting aside lands for forest or other public purposes, or withdrawing the same, shall be made by the governor, and lands while so set aside for such purposes may be managed as may be provided by the laws of the Territory. The commissioner is hereby authorized to perform any and all acts, prescribe forms of oaths, and, with the approval of the governor and said board, make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this section and the land laws of Hawaii into full force and effect (U.S.C. Title 48, Sec. 677).

Had withdrawal for the use of the United States been contemplated then it would not have been provided that lands so withdrawn were to be managed as provided by the laws of the Territory for lands in the possession of the United States would, of course, be managed according to federal law.

When it became apparent that it would be advisable to authorize the withdrawal of land for federal purposes, Congress made appropriate provisions therefor by enacting the statute of August 21, 1941 (55 Stat., 658, Ch. 394) by which Section 73(q) of the Organic Act was amended.

That section, as so amended, provides that:

* * * All orders setting aside lands for forest or other public purposes, or withdrawing the same, shall be made by the governor, and lands while so set aside for such purposes may be managed as may be provided by the laws of the Territory; the provisions of this paragraph may also be applied where the 'public purposes' are the uses and purposes of the United States, and lands while so set aside may be managed as may be provided by the laws of the United States. * * * (48 U.S.C.A., Sec. 677, R.L.H. 1945, p. 42).

If Section 73 of the Organic Act as it originally stood authorized the withdrawal of leased land for federal purposes, the passage of that act would not have been necessary.

Appellant argues from the legislative history of the amendment that it was only intended to make a change as to lands acquired after the annexation and that hence "public purposes" as used in Section 73(q) before the amendment must be held to include federal purposes when applied to ceded lands. However, to say that "public purposes" a phrase expressed only once in the withdrawal clause meant territorial purposes only as to after acquired lands and territorial and federal purposes as to ceded lands is absurd. The act makes no such distinction.

As the legislative history of the amendment shows, H.R. Rep. No. 831, 77th Cong., 1st Sess., the act was passed as a result of a memorial to Congress contained in Senate Concurrent Resolution 11, passed by the legislature of Hawaii, April 19, 1941, at its regular ses-

sion. In Standing Committee Report No. 105, Senate Journal, Twenty-first Legislature of Hawaii, page 350, it is stated:

The purpose of this concurrent resolution is to present a bill to Congress amending Section 73 of the Organic Act so as to provide a method whereby lands acquired by the Territory after annexation may be set aside by the Governor for the uses and purposes of the United States. At the present time there is no provision in the Organic Act which covers this situation, as Section 91 of the Organic Act only covers the setting aside to the United States of lands ceded upon annexation.

Thus it appears that the power to take ceded lands for federal purposes prior to the amendment was contained in Section 91 rather than Section 73 and we have already shown that Section 91 did not and does not apply in the case of lands under lease or sold by the Commissioner of Public Lands under Section 73. Thus it is apparent that until the amendment which expressly provided for a withdrawal of lands for federal purposes *and the management of such lands by the laws of the United States*, "public purposes" as used in Section 73 and as used in the leases in question did not include purposes of the United States and that therefore the taking by the United States without just compensation was wrongful.

We have already discussed the construction of the leases involved so we will not deal specifically with appellant's argument on that point except to note the complete failure to mention the controlling precedent, *Ai v. Bailey*, *supra*.

III.

**APPELLANT FAILED TO PROVE ITS COUNTERCLAIM
BY A PREPONDERANCE OF THE EVIDENCE.**

The facts in the record with respect to appellant's counterclaim, which are somewhat scanty at best, are set forth in our statement of the evidence.

It will be noted that when the Army ordered appellees out of their ranch on June 20, 1942 (Pl. Ex. D; R. 64, 65) including the Makua fee simple lands, the Army was (at appellees' request) replacing certain installations on those lands on other fee simple lands of appellees' at Ohikilolo and thus the move from Magua was delayed pending the installation of those replacements (R. 67). The Army actually "came down and moved" appellees out of the fee simple land and the leases which comprised the ranch (R 65). Some of the installations made at Ohikilolo consisted of equipment removed from the Makua fee lands and some were new (R. 102, 182, 184). This removal from the Makua fee lands at the order of the Army shortly after June 20, 1942, was many months prior to the filing of a condemnation proceeding against those lands in 1943 (R. 113).

Appellant's "counterclaim" is stated in its answer as follows:

Following the termination of the leases referred to in the complaint the defendant expended the sum of \$23,868.52 in the construction of buildings and facilities on other lands owned by the plaintiffs. These expenditures were made in connection with removal of the plaintiffs' ranch activities from the leased property to said other

lands. Should damages be awarded based upon termination of the leases, the defendant prays that it be allowed the aforesaid sum of \$23,868.52, as a setoff. (R. 9).

All the evidence indicates that the expenditure pleaded was not in connection with the removal of appellees' ranch activities from the leased land but from the fee lands from which appellees were being ejected without an eminent domain proceeding and without claim of right.

No evidence has been introduced to show that the replacements made were bargained for between the parties or that it was contemplated by the parties that the government should be recompensed for the expenses incurred. As a part of the ouster of appellees from their lands the government replaced (at appellees' request certain facilities it was seizing. Such facts provide no basis for recovery either in contract or quasi-contract. The benefit conferred, if any, has not been shown to have been done with an express or implied expectancy or understanding of repayment and hence stands as merely a gratuity given appellees to placate them for wrongs done them which are not in the scope of this action. Originally a claim had been made to the Army for the seizure of the fee simple lands and damage thereon but it was abandoned when the condemnation was filed since appellees felt they would be compensated in that action (R. 112).

In addition it was testified that in compromising the Makua condemnation, appellees took into consid-

eration the facilities replaced at Ohikilolo (R. 107, 109, 322, 323). There was no evidence that the replacements were not so considered. Appellant's brief (p. 9) cites the remarks of government counsel to the effect that the government did not take these improvements into consideration in compromising the condemnation. Counsel's statements are not evidence.¹² Certainly the question of the value of the replacements was germane to a settlement of the Makua fee lands condemnation.

Summed up, it is apparent that the improvements made by the government on the Ohikilolo property were to replace those on the Makua fee lands at a time when those lands were being seized without claim of right. There is no evidence that the improvements were made in the expectation or on the understanding of repayment, and furthermore the evidence is that appellees in settling the later condemnation of those fee lands made allowance for those improvements. The District Court found that appellant failed to establish its counterclaim by a preponderance of the evidence and accordingly denied it (R. 16). This finding of fact not being "clearly erroneous" should not be disturbed here.

¹²⁶ *Wigmore on Evidence*, Sec. 1806.

CONCLUSION.

For the reasons stated the judgment should be affirmed.

Dated, Honolulu, Hawaii,
January 31, 1951.

Respectfully submitted,
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(Appendix Follows.)

Appendix.

Appendix

Private Law 433—80th Congress
Chapter 747—2d Session
H.R. 915

AN ACT

To confer jurisdiction upon the District Court of the United States for the Territory of Hawaii to hear, determine, and render judgment on the claims of the executors and trustees of the estate of L. L. McCandless, deceased, as their interests may appear against the United States of America.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction is hereby conferred upon the District Court of the United States for the Territory of Hawaii to hear, determine, and render judgment upon the claims of the executors and trustees of the estate of L. L. McCandless, deceased, as their interests may appear, against the United States of America for damages, if any, but not exceeding the sum of \$46,155, for the loss of personal property including the loss of livestock, alleged to have been caused by military personnel of the United States, and for damages, if any, but not exceeding the sum of \$67,500 for the alleged illegal withdrawal of the Government lands covered by General Leases Numbers 1740 and 1741 of the Territory of Hawaii, each dated December 29, 1925, from the operation of those leases for use by the United States Army for war purposes:

Provided, That judgment shall not be rendered against the United States with respect to any part of the alleged damages for the loss of personal property, including livestock, which arose out of the combat activities of military personnel of the United States.

Sec. 2. Proceedings for the determination of these claims shall be had in the same manner as in cases against the United States of which the district courts of the United States have jurisdiction under the provisions of section 24 of the Judicial Code, as amended: Provided, that suit hereunder shall be instituted within one year after the enactment of this Act: And provided further, That this Act shall be construed only to waive the immunity from suit of the Government of the United States and to confer jurisdiction upon said court to hear, determine, and render judgment upon the claims of the executors and trustees of the estate of L. L. McCandless, deceased, described in section 1 hereof, and not otherwise to affect any substantive rights of the parties.

Approved June 29, 1948.